

FILED

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2012 NOV -5 PM 1:07

CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES

Attorney for Slimvac, Inc.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

IN RE DMCA SUBPOENA TO EBAY, INC.) Case No. **MC12-480**
)
) **DECLARATION OF**
) **VICTORIA SHAPIRO**

I, Victoria Shapiro, declare and testify as follow:

1. I am admitted to practice law in the State of California. I represent Slimvac, Inc., which conducts business as DVRupgrade ("Slimvac").

2. On behalf of Slimvac, I am seeking a subpoena pursuant to 17 U.S.C. § 512(h) to obtain information sufficient to identify a person or entity conducting business at eBay.com ("eBay") under the name "uoph" (hereinafter, "UOPH")

3. I have a good faith belief, based on the facts known to me, that UOPH is infringing Slimvac's intellectual property rights.

4. The purpose for which the subpoena is sought is to obtain the identity of alleged infringers and the information obtained therefrom will only be used for the purpose of protecting rights under 17 U.S.C. 101, et. seq.

1 I declare under penalty of perjury under the laws of the United States of America
2 that the foregoing is true and correct.

3 Executed on November 5, 2012.

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6 Victoria Shapiro, CA Bar # 202197
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VICTORIA SHAPIRO, ESQ
CA BAR # 202197
9999 JEFFERSON BLVD
CULVER CITY, CALIFORNIA 90232

November 5, 2012

Registered Agent
eBay, Inc.
173 West Election Rd
Draper, Utah 84020

Re: Subpoena and Notice of Infringement

Dear Registered Agent:

I represent Slimvac, Inc. d/b/a DVRupgrade (hereinafter, "Slimvac"). We provide this notice pursuant to Section 512 of Title 17 of the U.S. Code (as enacted by the "Online Copyright Infringement Liability Limitation Act") to request that eBay, Inc. provide information sufficient to identify the seller "uoph" ("UOPH") on eBay.com.

Attached hereto as Exhibit A is a Notice of Claimed Infringement, which is incorporated into and made part of this letter.

This subpoena is being served only after eBay's VeRO program was unable to produce identifying information for UOPH. Specifically, on or about October 22, 2012, Slimvac submitted a Notice of Claimed Infringement to eBay's VeRO program. On October 23, 2012, Slimvac executed a Personal Information Agreement and requested that eBay provide identifying information for UOPH. On October 29, 2012, eBay provided the following information to Slimvac:

uoph / uoph70@gmail.com
UPH Consulting
1605 West President George Bush Highway,
Ste 120, Plano, TX, 75080
US
972 302 5965

The foregoing information is insufficient to identify UOPH. The address provided cannot be verified with the United States Postal Service, Google Maps, MapQuest or Yahoo Maps. The phone number is not in service. Furthermore, eBay did not provide Slimvac a contact name for UOPH or UPH Consulting.

eBay, Inc. Registered Agent

November 5, 2012

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Section 512(h) of the Copyright Act requires eBay to provide “information sufficient to identify the alleged infringer...to the extent such information is available to the service provider.” The Privacy Policy of eBay’s affiliated entity, PayPal, makes personal information concerning its account holders available to “[m]embers of the eBay Inc. corporate family -- like eBay” under enumerated circumstances. Such circumstances include, among other things, “help[ing] detect and prevent potentially illegal acts and violations of our policies.” Further, the PayPal Privacy Policy states that it will share personal information when “compelled to do so by a subpoena, court order or similar legal procedure.”

Slimvac contends that information sufficient to identify UOPH is readily available to eBay from its corporate affiliate PayPal. Based on Slimvac’s records and purchases of infringing products, UOPH maintains an account with PayPal under the email address uoph70@gmail.com, the same email address UOPH uses as an eBay seller. Internal Revenue Code Section 6050W requires PayPal to obtain and verify personal information for customers with \$20,000 or more in gross payment volume and over 200 separate payments in a calendar year. Based on publicly available data, UOPH meets such criteria. As a result, Section 6050W requires PayPal to obtain and verify personal information about UOPH so that these transactions can be reported to the Internal Revenue Service.

In accordance with the terms of Section 512(h) of the Copyright Act, and on behalf of Slimvac, I request the information specified in the subpoena so that Slimvac can enforce its legal rights against UOPH.

I believe that the information in this notification is accurate. Under penalty of perjury, I hereby affirm that I am authorized to act on behalf of Slimvac, whose exclusive intellectual property rights have been infringed by UOPH. By providing this notice, Slimvac is not waiving its rights to engage in other enforcement activities, and reserves all rights to so at any time.

You may contact me at the above-listed address or via phone at 310-963-9054. Thank you for your cooperation and prompt response.

Sincerely,



Victoria Shapiro

Attachment

EXHIBIT A
NOTICE OF CLAIMED INFRINGEMENT

To eBay, Inc.:

I, the undersigned, state under penalty of perjury that:

I am an agent authorized to act on behalf of the owner of certain intellectual property rights ("IP Owner"); and

I have a good faith belief that the listings identified (by item number) below offer or offered items or contain materials that are not authorized by the IP Owner, its agent, or the law.

List of allegedly infringing listings, items, or materials:

320641625355
320640612124
220691758977
220707125953
320640612005
220723585335
220691749865
221010849906
220737557050

REASON:

Copyright – item infringement

3.1. Software offered for sale is in violation of an enforceable license agreement, which constitutes a copyright infringement.

Reason code: 3.1

Work(s) infringed:

InstantCake™ TiVo Installation Software

Name of IP Owner: Slimvac, Inc. d/b/a DVRUpgrade

Name and title: Victoria Shapiro, Esq. attorney for Slimvac, Inc.

Company: Slimvac, Inc., d/b/a DVRUpgrade

Address: 9999 Jefferson Blvd

City, State, and Zip: Culver City CA 90232

Email address (for correspondence with eBay): legal@dvrupgrade.com

Email address (to be given to eBay sellers): legal@dvrupgrade.com

Company Telephone: 424-644-6554

Truthfully,

/S/: Victoria Shapiro



FOR OFFICE USE ONLY

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Central District of California

In re DMCA Subpoena to eBay, Inc.

Plaintiff

v.

Defendant

Civil Action No. **MC12-480**

(If the action is pending in another district, state where:)

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**To: Registered Agent, eBay, Inc.
173 West Election Road, Draper, UT 84020

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: Information sufficient to identify the seller "uoph," from any and all sources, including but not limited to billing, administrative, payment, deposit and withdrawal records that prove the validity of the name(s), address(es), telephone number(s), email address(es), account numbers, and any other electronic or physical names, addresses or contact information.

Place: Slimvac, Inc.
9999 Jefferson Blvd
Culver City CA 90232

Date and Time:

November 13, 2012 9:00 a.m.

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:


The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: **NOV - 5 2012**

CLERK OF COURT

OR

Ann M. Mathias
Signature of Clerk or Deputy Clerk



Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party)

Slimvac, Inc., who issues or requests this subpoena, are:

Victoria Shapiro, Esq., c/o Slimvac, Inc., 9999 Jefferson Blvd., Culver City CA 90232
Tel 310-963-9054, Fax 310-427-7188, email legal@dvrupgrade.com

FOR OFFICE USE ONLY

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____
_____ *Server's signature*

_____ *Printed name and title*

_____ *Server's address*

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)**(c) Protecting a Person Subject to a Subpoena.**

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).